

REMARKS

Petition for Extension of Time Under 37 CFR 1.136(a)

It is hereby requested that the term to respond to the Examiner's Action of February 21, 2007 be extended one month, from May 21, 2007 to June 21, 2007.

Authorization to charge a Credit Card is given to cover the extension fee. The Commissioner is hereby authorized to charge any additional fees associated with this communication to Deposit Account No. 19-5425.

In the Office Action, the Examiner indicated that claims 1 through 33 are pending in the application and the Examiner rejected claims 1-8, 14-21, and 27-33, and objected to claims 9-13 and 22-26.

Allowable Subject Matter

On page 6 of the Office Action, the Examiner indicated that claims 9-13 and 22-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Applicant thanks the Examiner for this indication of allowable subject matter; however, in view of the arguments presented herein, applicant is not amending the claims at this time.

Claim Rejections, 35 U.S.C. § 103

On page 2 of the Office Action, the Examiner rejected claims 1-8, 14-21, and 27-33 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,120,921 to Ito.

The Present Invention

A secondary channel is used to broadcast advertisement clips (e.g., audio clips) to a receiver for subsequent decoding and playback. The receiver is configured for different tiers of service, e.g., one that delivers substantially advertising-free content and another that delivers content that includes more significant amounts of advertising. The content delivered to both is the same content; however, for the service tier that includes more advertising, the advertisements broadcast on the secondary channel are interleaved into the content, preferably in such a way that the continuity of the content being delivered is not compromised. The present claimed invention specifically recites a method, apparatus, and computer program product which enables the reception of a first tier of broadcasting service whereby subscribers subscribing to the first tier receive only primary content, and enabling reception of a second tier broadcasting service whereby subscribers subscribing to the second tier receive both the primary content and the secondary content. In a preferred embodiment, the primary content comprises substantive programming content and the secondary content comprises promotional, i.e., advertising, content.

U.S. Patent No. 7,120,921 to Ito

U.S. Patent No. 7,120,921 to Ito (“Ito”) teaches a system of providing broadcast information, whereby a user of the system is able to selectively replay advertising content at a more convenient time. For example, a driver of a vehicle who is paying attention to driving and hears an advertisement but is unable to write down a telephone number identified in the advertisement can go back later and replay the advertisement to obtain the missed information. Ito provides this function by receiving both programming and advertisement information broadcast and extracting the advertising information separately and storing it in a manner replayable by the user.

The Examiner has not Established a *prima facie* Case of Obviousness

As set forth in the MPEP:

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skilled in the art, to modify the reference or to combine reference teachings.

MPEP 2143

As noted above, the present claimed invention provides multi-tiered broadcasting services to subscribers, in such a manner that primary content is broadcast over primary content channels and secondary content is broadcast over secondary content channels. Subscribers select a “first tier broadcasting service” or a “second tier broadcasting service”, and based upon this selection, hear only the primary content broadcast, or hear both the primary and secondary content

broadcast. The concept of this “tiered” system is clearly described in the present application.

See, for example, page 4, line 20 through page 5, line 17.

Nothing in Ito remotely suggests these claimed elements, each of which are found in the independent claims of the present invention (claims 1, 14, and 27). Nowhere in Ito is there any suggestion or discussion of multi-tiered service as claimed and described herein. While Ito does discuss the separate receiving of content and advertising and the ability to separately listen to each, nowhere does Ito teach or suggest a system, method or computer program product enabling subscribers to choose between receiving just the primary content, or both the primary and the secondary content, as separate “tiers” of service.

The problems being solved by the two inventions also differ. Ito solves the problem whereby a user can selectively play back advertising at a later point when attention can be paid to the advertising; the present claimed invention allows a broadcast service to provide different levels of content (with advertising or without advertising) based upon a subscriber’s selection.

Each of the claims include the above-described limitations. The dependent claims add additional limitations neither taught nor suggested by Ito. Accordingly, all of the pending claims patentably define over Ito and are in condition for allowance. Therefore, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-8, 14-21, and 27-33 based on 35 U.S.C. §103.

Conclusion

The present invention is not taught or suggested by the prior art. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims. An early Notice of Allowance is earnestly solicited.

Included herein is a Petition for extension of time to respond to the Examiner's Action, and authorization to charge the extension fee to a credit card. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 19-5425.

Respectfully submitted

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Date

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